

ADMINISTRATIVE APPEAL OF JAMES ROSENBERG

v.

AREA DIRECTOR, PORTLAND AREA OFFICE

IBIA 77-50-A

Decided August 1, 1977

Appeal from an administrative decision of the Area Director, Portland Area Office, Bureau of Indian Affairs, concerning sale of grazing privileges on the Umatilla Reservation, Oregon.

Reversed in Part and Affirmed in Part.

1. Indian Lands: Grazing: Appeals: Generally

A person who has no interest that would be adversely affected by the outcome of an appeal is not an interested party and service of an appeal on such person is not necessary under 25 CFR 2.11(a).

2. Indian Lands: Grazing: Sales: Generally

Submission of more than one bid on any one unit by any given bidder is considered proper unless prohibited by the sale terms.

APPEARANCES: Ralph Currin, Esq., of Currin and Storie, for appellant, James Rosenberg.

OPINION BY CHIEF ADMINISTRATIVE JUDGE WILSON

The above-entitled matter comes before the Board for review and decision pursuant to the provisions of 25 CFR 2.19(b).

Briefly stated, the facts regarding the appeal are as follows:

In response to notice styled Sale of Grazing Privileges, dated April 14, 1975, sealed bids received on or before 9 a.m., Pacific Daylight Time, April 30, 1975, were opened immediately thereafter at the Umatilla Indian Agency in the presence of bidders who desired to attend.

Four bids were received on Range Unit No. 12 which is the subject of this appeal. The bidders and the amounts bid are as follows:

1. Anderson Land and Livestock \$1,488.29
2. John K. McLean - \$1,200
3. James Rosenberg - \$1,550
4. Anderson Land and Livestock \$2,200

Anderson Land and Livestock was declared the high bidder on Range Unit No. 12 and on May 5, 1975, was officially awarded the grazing privileges thereon by the Superintendent of the Umatilla Indian Agency for the period January 1, 1975, to December 31, 1979. All bidders on the unit involved were notified of the award.

Thereafter, on May 23, 1975, James Rosenberg, through his attorney, Ralph Currin, filed a petition appealing the Superintendent's decision awarding the grazing privileges to Anderson Land and Livestock. The petitioner alleges he was the high bidder on the unit in question based on the following assertions:

That prior to April 30, 1975, your petitioner filed a sealed bid with the Bureau of Indian Affairs, Umatilla Agency, in the sum of \$1,550.00 and deposited therewith a Cashier Check No. 68019, issued by First National Bank of Oregon, Pendleton Branch, in the sum of \$387.05. There were three bids opened in the amounts as follows:

Anderson Land and Livestock	\$1,486.29
John McClean [sic]	\$1,200.00
James Rosenberg	\$1,550.00

Thereafter, Anderson Land & Livestock was permitted to file an additional bid for the same grazing unit in the sum of \$2,200.00 and the grazing privileges were awarded to said Anderson Land & Livestock. Your petitioner understood that any bidder was allowed only one bid for each range unit. After Anderson Land & Livestock heard the bid of your petitioner, it was allowed to bid again at a larger figure than its first bid.

Your petitioner alleges that the procedure followed on the allowance of the second bid violates the spirit, if not the law, on sealed, competitive bidding.

Upon receipt of the Notice of Appeal, the Assistant Area Director on June 2, 1975, requested of appellant's attorney via certified mail, return receipt requested, proof of service of the petition on John K. McLean, one of the bidders on Range Unit No. 12.

On July 10, 1975, the Area Director via certified mail, return receipt requested, advised appellant's counsel that proof of service on John K. McLean had not been received and the failure to do so was grounds for summary dismissal of the appeal. The Area Director also advised appellant's counsel that the appeal had been considered on its merits and that the Superintendent's decision awarding the grazing privileges to Anderson Land and Livestock was being sustained. Among other things, the Area Director reported that the record did not show "that an additional bid of a larger figure was submitted by Anderson Land and Livestock after the bid of Mr. Rosenberg was read at the bid opening."

On August 1, 1975, the Area Director further advised appellant's counsel that the appeal of May 23, 1975, had been dismissed on July 10, 1975, specifically for failure to file proof of service on John K. McLean as required by 25 CFR 2.11(a). No mention is made in the letter of August 1, 1975, that the merits of the appeal of May 23, 1975, had been considered and a decision rendered thereon.

It is from this decision of August 1, 1975, that the appellant on August 7, 1975, filed a notice of appeal to the Commissioner, Bureau of Indian Affairs, setting forth the following grounds:

1. The action of the Area Director in dismissing the appeal was arbitrary and contrary to law because John McLean is not an interested party;

2. The appellant has not been heard on the merits of his appeal which challenges the procedure whereby a bidder is permitted two sealed bids in different sums on one grazing range unit at one bid opening.

On January 27, 1975, the Acting Deputy Commissioner of Indian Affairs via certified mail, return receipt requested, advised appellant's attorney that the Board of Indian Appeals would review and render a final decision on the appeal since the Commissioner had failed to act on the appeal within the 30-day limit set forth in 25 CFR 2.19. Copies thereof were furnished the Portland Area Director, Anderson Land and Livestock Company, John K. McLean and Leslie Minthorn of the Confederated Tribes of Umatilla.

No copy of the letter of January 27, 1975, was furnished the Board. As a consequence, the Board had no knowledge of the intended referral of the appeal until July 13, 1977, when the appeal record was submitted to the Board by the Bureau of Indian Affairs. No explanation was given as to why the Board had not been furnished a copy of the January 27, 1975, letter.

The passage of some 2-1/2 years without any action on the appeal has for all intents and purposes mooted the appeal. However, it is the opinion of this Board that a decision is in order to dispose of the issues raised in the appeal and to clarify the record in regards thereto.

[1] The Board is in agreement with appellant's first contention that John K. McLean was not an interested party for service purposes under the provisions of 25 CFR 2.11(a) which provide for service on each interested party known to him as such (emphasis supplied). The appellant in this particular instance did not consider McLean as such since he would not be affected by the outcome of the appeal. 25 CFR 2.1(b) defines "interested party" as any person whose interest would be adversely affected by proceedings conducted under this part. McLean, in the opinion of this Board, had no interest in the matter that would be adversely affected by the final outcome of the appellant's appeal. Accordingly, the Area Director's decision holding to the contrary should be reversed.

The Board however is not in agreement with the appellant's second contention that no bidder is permitted two sealed bids in different sums on one grazing range unit at one bid opening.

[2] An examination of the terms of the sale of grazing privileges indicates no prohibition against the submission of more than

one bid on any one unit by any given bidder. The record shows Anderson Land and Livestock submitted two separate bids on Range Unit No. 12, one on April 29, 1975, which was received by the Agency at 3:55 p.m., and the other on April 30, 1975, at 8:55 a.m. The record further indicates all bids submitted on Range Unit No. 12 were received prior to 9 a.m., Pacific Daylight Time, and opened thereafter in accordance with the terms of the sale. We find no merit in appellant's allegation that Anderson Land and Livestock was permitted to file an additional bid after appellant's bid was opened and heard. The evidence clearly does not support such an allegation. On the contrary, the evidence indicates the four bids on Range Unit No. 12 were properly received and opened and the award made accordingly. For the foregoing reasons the Area Director's decision of July 10, 1975, sustaining the Superintendent's decision in awarding Anderson Land and Livestock Range Unit No. 12 should be affirmed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's decision of July 10, 1975, summarily dismissing the appellant's appeal of May 23, 1975, is hereby REVERSED for the reasons hereinabove stated and the Area Director's decision sustaining the Superintendent's decision awarding Range Unit No. 12 to Anderson Land and Livestock is hereby AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

Alexander H. Wilson
Chief Administrative Judge

We concur:

Mitchell J. Sabagh
Administrative Judge

Wm. Philip Horton
Administrative Judge